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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. *2013 - 663*

13 **ELIZABETH NATALIE RODRIGUEZ**

STATEMENT OF ISSUES

14 **Registered Nurse License Applicant**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about September 10, 2012, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Elizabeth Natalie
24 Rodriguez (Respondent). On or about September 4, 2012, Elizabeth Natalie Rodriguez certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on October 17, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation
22 furnished by the applicant or licensee.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

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1 (a) Assaultive or abusive conduct including, but not limited to, those violations
2 listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to Section
6 290 of the Penal Code.

7 13. California Code of Regulations, title 16, section 1445 states:

8 (a) When considering the denial of a license under Section 480 of the code,
9 the board, in evaluating the rehabilitation of the applicant and his/her present
10 eligibility for a license will consider the following criteria:

11 (1) The nature and severity of the act(s) or crime(s) under consideration as
12 grounds for denial.

13 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
14 under consideration as grounds for denial which also could be considered as grounds
15 for denial under Section 480 of the code.

16 (3) The time that has elapsed since commission of the act(s) or crime(s)
17 referred to in subdivision (1) or (2).

18 (4) The extent to which the applicant has complied with any terms of parole,
19 probation, restitution, or any other sanctions lawfully imposed against the applicant.

20 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(May 2, 2005 Criminal Conviction for DUI on April 2, 2005)**

24 14. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
25 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially
26 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
27 follows:

28 a. On or about May 2, 2005, in a criminal proceeding entitled *People of the
State of California v. Elizabeth Natalie Rodriguez*, in Santa Barbara County Superior Court, case
number 1200991, Respondent was convicted on her plea of guilty to violating Vehicle Code
section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court

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1 dismissed an additional count of violating Vehicle Code section 23152, subdivision (b), driving
2 with a blood alcohol concentration (BAC) of .08 percent or more, pursuant to a plea agreement.

3 b. As a result of the conviction, on or about May 2, 2005, Respondent was
4 granted three years unsupervised probation, and sentenced to 60 days in the Santa Barbara County
5 Jail, suspended pending successful completion of probation. Respondent was ordered to
6 complete a three-month first offender alcohol program, pay fines and assessments in the amount
7 of \$1,600, and comply with DUI probation conditions. Respondent's driver's license was
8 restricted for 12 months. On or about October 23, 2012, the court granted Respondent's request
9 for a dismissal. Respondent was permitted to withdraw her plea of guilty, a plea of not guilty
10 entered, and the case was dismissed pursuant to Penal Code section 1203.4.

11 c. The facts that led to the conviction are that on or about April 2, 2005, at
12 approximately 3:16 in the morning, Respondent was arrested by the California Highway Patrol
13 for driving under the influence of alcohol. Respondent provided two breath samples which were
14 analyzed by the preliminary alcohol screening device with a BAC of .114 and .118, respectively.
15 Respondent was 19 years old at the time of her arrest.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(December 22, 2009 Criminal Conviction for DUI With a Prior on June 10, 2009)**

18 15. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
19 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially
20 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
21 follows:

22 a. On or about December 22, 2009, in a criminal proceeding entitled *People*
23 *of the State of California v. Elizabeth Natalie Rodriguez*, in San Diego County Superior Court,
24 case number M084017, Respondent was convicted on her plea of guilty to violating Vehicle Code
25 section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court
26 found true the special allegation that Respondent was previously convicted of violating Vehicle
27 Code section 23152, subdivision (a) pursuant to Vehicle Code section 23540, as detailed in
28 paragraph 14, above. The court dismissed an additional count of violating Vehicle Code section

23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, pursuant to a plea agreement.

b. As a result of the conviction, on or about December 22, 2009, Respondent was granted five years summary probation, and sentenced to 96 hours in the San Diego County Sheriff's Work Release Program. Respondent was ordered to complete five days in the Public Service Program, with credit for one day, a Multiple Conviction Program, a MADD Victim Impact Panel session, and payment of fines, fees, and restitution in the amount of \$2,684. On or about December 8, 2011, the court granted Respondent's petition for dismissal. Respondent was permitted to withdraw her plea of guilty, a plea of not guilty entered, and the case was dismissed pursuant to Penal Code section 1203.4.

c. The facts that led to the conviction are that on or about the early morning of June 10, 2009, patrol officers with the California Highway Patrol (CHP) were in the area of Pacific Beach when they observed the vehicle in front of them, driven by Respondent, weaving within its lane and drifting to the number one lane, then swerving to the right, nearly striking the curb. The officers conducted a traffic stop. Upon contact with Respondent, the officer noted that he could immediately smell the odor of an alcoholic beverage coming from inside the vehicle. Respondent's movements were slow, her eyes were red and watery with dilated pupils, and her speech was slow and drawn. Respondent admitted to drinking one cocktail two hours earlier. The officer had Respondent exit her vehicle; she was unsteady on her feet. The officer could smell the odor of an alcoholic beverage coming from Respondent's breath while she spoke. Respondent was unable to perform the field sobriety tests as explained and demonstrated by the officer. Respondent claimed that because of her training as a dancer, she was unable to stand with her heels and toes together, and she was unable to walk without pointing her toes outward. Respondent was arrested for driving under the influence of alcohol. Respondent provided a blood sample that subsequently tested with a BAC of .15 percent.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Dangerous Use of Alcohol)**

3 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
4 of the Code for unprofessional conduct in that on or about April 2, 2005 and June 10, 2009,
5 Respondent used alcoholic beverages to an extent or in a manner that was dangerous and
6 injurious to herself and the public when she operated a motor vehicle while impaired by alcohol,
7 as described in paragraphs 14 and 15, above. Such conduct would be a ground for discipline
8 under section 2762, subdivision (b) of the Code for a licensed registered nurse.

9 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of Alcohol-Related Offenses)**

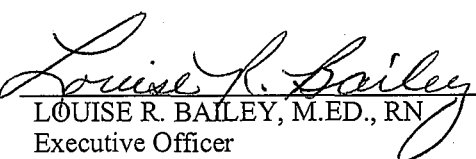
11 17. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
12 of the Code for unprofessional conduct in that on or about May 2, 2005 and December 22, 2009,
13 Respondent was convicted of criminal offenses involving the consumption of alcohol as
14 described in paragraphs 14 and 15, above. Such conduct would be a ground for discipline under
15 section 2762, subdivision (c) of the Code for a licensed registered nurse.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

- 19 1. Denying the application of Elizabeth Natalie Rodriguez for a Registered Nurse
20 License;
21 2. Taking such other and further action as deemed necessary and proper.
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23 DATED: FEBRUARY 21, 2013

24 
25 LOUISE R. BAILEY, M.ED., RN
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
 State of California
 Complainant

SD2012704506